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October 1, 2009

VIA ECF AND FEDERAL EXPRESS

Honorable Madeline Cox Arleo, U.S.M.J.
United States District Court for the District of New Jersey
Martin Luther King, Jr. Federal Building and Courthouse
50 Walnut Street
Newark, New Jersey 07101-0999

Re: Merrill Lynch Business Financial Services, Inc.
vs. Arthur Kupperman, et al.
Civil Action No. 06 Civ. 4802 (DMC)

Dear Magistrate Judge Arleo:

As Your Honor is aware, this firm represents defendant JPMorgan Chase Bank, N.A. ("Chase") in connection with the above-referenced matter. By Order dated August 25, 2009, Your Honor directed that "[a]ll dispositive motions shall be filed by September 30, 2009 or are waived and the case will proceed to trial." (A copy of Your Honor's Order is respectfully attached hereto as Exhibit A). As directed by Your Honor, Chase yesterday filed a motion for summary judgment against defendant Arthur Kupperman ("Kupperman"), and Chase also filed a motion for summary judgment against plaintiff Merrill Lynch Business Financial Services, Inc. ("MLBFS") with respect to Chase's counterclaim and for related relief.

Chase duly filed its papers in support of a motion for summary judgment against MLBFS, including a brief, statement of uncontested material facts pursuant to Rule 56.1, and various affidavits, by ECF at 5:35 p.m. yesterday. (A copy of the notice of electronic filing regarding Chase's motion papers is respectfully attached hereto as Exhibit B). Yesterday evening at 11:12 p.m., MLBFS purported to file a "motion for summary judgment" against Chase. (A copy of the notice of electronic filing regarding MLBFS's "motion" is attached hereto as Exhibit C). MLBFS, however, failed to include any brief, statement of uncontested material facts pursuant to Rule 56.1, or other papers in support of its "motion." Instead, MLBFS merely filed a notice of motion (a copy of which is attached hereto as Exhibit D), by which MLBFS stated that it "relies upon the Second Amended Verified Complaint of MLBFS filed on December 27, 2007 (docket entry # 227 in this matter), the Rule 56.1 Statement of Uncontested Material Facts In Support of Plaintiff's Motion For Summary Judgment against Kupperman, filed contemporaneous herewith, and will *supplement this motion with a Memorandum of Law and a Supplemental Rule 56.1 Statement.*" (Notice of Motion, Exhibit D hereto, at 2 (emphasis added)).

H E R R I C K

Honorable Madeline Cox Arleo, U.S.M.J.
 October 1, 2009
 Page 2

It is abundantly clear what MLBFS was trying to do through its hurriedly-filed "notice of motion" last night. MLBFS's counsel received Chase's duly-filed motion papers by ECF and, upon realizing that Your Honor had unqualifiedly directed that all motions be filed yesterday or would be waived, then decided to retaliate against Chase by hurriedly filing a "motion for summary judgment" against Chase literally at the eleventh hour. MLBFS's "motion," however, violates the Rules of Court and should therefore be stricken and dismissed in all respects.

Notwithstanding the requirements of Rule 7.1, MLBFS failed to submit a brief, and MLBFS also failed to file a Rule 56.1 statement with respect to its "motion" for summary judgment against Chase. See Rule 56.1 ("A motion for summary judgment unaccompanied by a statement of material facts not in dispute shall be dismissed").¹ Moreover, MLBFS failed to file any statement under Rule 7.1 (d)(4) asserting that no brief is necessary. Instead, MLBFS vaguely asserted that it would "supplement" its "motion for summary judgment" with the requisite brief and Rule 56.1 statement at some indeterminate later date.

Your Honor, however, expressly directed that "all dispositive motions shall be filed by September 30, 2009 or are waived." MLBFS's "motion," by which it professes the right to "supplement" its papers with the required brief and Rule 56.1 statement at some indeterminate date, plainly violates Your Honor's Order. MLBFS had many months to prepare and file a brief and Rule 56.1 statement if it truly wished to proceed by way of dispositive motion against Chase. Having failed to do so, MLBFS has waived its right to move for summary judgment against Chase, and Your Honor's Order should be enforced in that regard.

For these reasons, Chase respectfully requests that the Court strike and dismiss MLBFS's "motion for summary judgment" against Chase in all respects. Finally, we respectfully note that MLBFS has purported to make its motions returnable on October 30, 2009. This return date would appear to be contrary to Rule 7.1 (c) and Rule 78.1 in any event. Thank you.

Respectfully submitted,


 Paul H. Schafhauser

cc: Hon. Dennis M. Cavanaugh, U.S.D.J. (by ECF and Federal Express)
 A. Michael Covino, Esq. (via ECF and mail)
 Michael Eidelman, Esq. (via ECF and mail)

¹ In an obvious effort to circumvent Rule 56.1, MLBFS asserted in its notice of motion that for purposes of its motion for summary judgment against Chase, it will "rely" on its Rule 56.1 Statement of Uncontested Material Facts In Support of Plaintiff's Motion For Summary Judgment against Kupperman. See MLBFS's Notice of Motion, Exhibit D hereto, at 2. MLBFS's Rule 56.1 Statement against Kupperman, however, does not even *mention* Chase, nor does it include *a single fact bearing on the issues that MLBFS purportedly wishes to raise on its "motion for summary judgment" against Chase*. Therefore, insofar as MLBFS truly wishes to "rely" on its Rule 56.1 Statement against Kupperman for purposes of its "motion" against Chase, the Court should summarily dismiss MLBFS's motion because it does not even mention Chase -- let alone present any basis upon which relief may be entered in favor of MLBFS against Chase.

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES MAGISTRATE JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
ROOM 2060
NEWARK, NJ 07101
973-297-4903

August 25, 2009

Charles S. Caranicas, Esq.
Vedder, Price, Kaufman & Kammholz, P.C.
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A. Michael Covino, Esq.
Budd Lerner
150 John F. Kennedy Parkway
Short Hills, NJ 07078

LETTER ORDER

Re: Merrill Lynch v. Kupperman, et al.
Civil Action No. 06-4802 (DMC)

Dear Counsel:

All dispositive motions shall be filed by September 30, 2009 or are waived and the case will proceed to trial.

SO ORDERED.

s/Madeline Cox Arleo
MADELINE COX ARLEO
United States Magistrate Judge

cc: Clerk
 Hon. Dennis M. Cavanaugh, U.S.D.J.
 All Parties
 File

EXHIBIT B

Motions

2:06-cv-04802-DMC-MCA MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC. v.
KUPPERMAN et al

SCHEDO

U.S. District Court

District of New Jersey [LIVE]

Notice of Electronic Filing

The following transaction was entered by AUGUST, JOHN on 9/30/2009 at 5:35 PM EDT and filed on 9/30/2009

Case Name: MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC. v. KUPPERMAN
et al
Case Number: 2:06-cv-4802
Filer: JPMORGAN CHASE BANK, N.A.
Document
Number: 290

Docket Text:

MOTION for Summary Judgment by JPMORGAN CHASE BANK, N.A.. Responses due by 10/19/2009 (Attachments: # (1) Brief, # (2) Statement of Uncontested Material Facts, # (3) Declaration of John August, # (4) Declaration of Wayne Olson part 1, # (5) Declaration of Wayne Olson part 2, # (6) Text of Proposed Order)(AUGUST, JOHN)

2:06-cv-4802 Notice has been electronically mailed to:

A. MICHAEL COVINO mcovino@budd-larner.com

CHARLES S. CARANICAS ccaranicas@vedderprice.com, ecfnydocket@vedderprice.com

FREDERICK BENNO POLAK fbp@ppgms.com, vvk@ppgms.com

JOHN M. AUGUST jaugust@herrick.com

JOHN P GLEASON jgleason@gleasonkoatz.com

MARK A. RONEY mar@saiber.com

MICHAEL JOHN GOETTIG mgoettig@vedderprice.com, ecfnydocket@vedderprice.com,
mgoettig@gmail.com

PATRICIA ANNE STAIANO pstaiano@hlgsllaw.com

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RANDALL M. LENDING rlending@vedderprice.com

VINCENT FRANK PAPALIA vfp@saiber.com, bonnie@saiber.com

2:06-cv-4802 Notice will not be electronically mailed to::

EMPRESAS LOURDES S.A.
c/o Gleason & Koatz, LLP
230 Park Avenue
Suite 2430
New York, NY 10169

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1046708974 [Date=9/30/2009] [FileNumber=3708555-0]
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Document description:Brief

Original filename:n/a

Electronic document Stamp:

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Document description:Statement of Uncontested Material Facts

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1046708974 [Date=9/30/2009] [FileNumber=3708555-2]
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Document description:Declaration of John August

Original filename:n/a

Electronic document Stamp:

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Document description:Declaration of Wayne Olson part 1

Original filename:n/a

Electronic document Stamp:

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Document description:Declaration of Wayne Olson part 2

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1046708974 [Date=9/30/2009] [FileNumber=3708555-5]
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Document description:Text of Proposed Order

Original filename:n/a

Electronic document Stamp:

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EXHIBIT C

August, John

From: njdefiling@njd.uscourts.gov
Sent: Wednesday, September 30, 2009 11:12 PM
To: ecfhelp@njd.uscourts.gov
Subject: Activity in Case 2:06-cv-04802-DMC-MCA MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC. v. KUPPERMAN et al Motion for Summary Judgment

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

District of New Jersey [LIVE]

Notice of Electronic Filing

The following transaction was entered by GOETTIG, MICHAEL on 9/30/2009 at 11:12 PM EDT and filed on 9/30/2009

Case Name: MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC. v. KUPPERMAN et al
Case Number: 2:06-cv-4802
Filer: MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.
Document Number: 307

Docket Text:
MOTION for Summary Judgment by MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.. Responses due by 10/30/2009 (GOETTIG, MICHAEL)

2:06-cv-4802 Notice has been electronically mailed to:

A. MICHAEL COVINO mcovino@budd-larner.com

CHARLES S. CARANICAS ccaranicas@vedderprice.com, ecfnydocket@vedderprice.com

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JOHN M. AUGUST jaugust@herrick.com

JOHN P GLEASON jgleason@gleasonkoatz.com

10/1/2009

EXHIBIT D

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MERRILL LYNCH BUSINESS FINANCIAL
SERVICES INC.,

Plaintiff,

-against-

ARTHUR KUPPERMAN; E. ROSS BROWNE;
PAULETTE KRELMAN; PGB
INTERNATIONAL, LLC; and J.P. MORGAN
CHASE BANK, NATIONAL ASSOCIATION,

Defendants.

Case No. 06-Civ-4802 (DMC)

NOTICE OF MOTION

TO: A. Michael Covino, Esq.
BUDD LARNER P.C.
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
*Attorneys for Defendant
Arthur Kupperman*

Paul H. Schafhauser, Esq.
HERRICK FEINSTEIN, LLP
One Gateway Center, 22nd Floor
Newark, New Jersey 07102
*Attorneys for Defendant/ Cross-Claim Plaintiff/ Counter-Claim Plaintiff
J.P. Morgan Chase Bank, N.A.*

PLEASE TAKE NOTICE that the undersigned attorneys for plaintiff Merrill Lynch Business Financial Services Inc. ("MLBFS") will apply before the Honorable Judge Dennis M. Cavanaugh of the District of New Jersey at the Post Office and Courthouse Building, 50 Walnut Street, Newark, New Jersey, in Courtroom 4, on October 30, 2009, at 2:30 p.m., or as soon thereafter as counsel can be heard, for an Order pursuant to Federal Rule of Civil Procedure 56

granting Summary Judgment in favor of MLBFS and against defendant J.P. Morgan Chase Bank, N.A. ("Chase") on the issue of MLBFS's first priority right over the assets of PITTRA that have been fraudulently transferred to PGB. MLBFS had the exclusive security interest over the assets of PITTRA, and because those assets were fraudulently conveyed to PGB, MLBFS is entitled to priority with respect to Chase as to PGB assets. In further support of this motion, MLBFS relies upon the Second Amended Verified Complaint of MLBFS filed on December 27, 2007 (docket entry #227 in this matter), the Rule 56.1 Statement of Uncontested Material Facts In Support of Plaintiff's Motion For Summary Judgment against Kupperman, filed contemporaneous herewith, and will supplement this motion with a Memorandum of Law and a Supplemental Rule 56.1 Statement.

Dated: New York, New York
September 30, 2009

VEDDER PRICE P.C.

By: s/ Randall M. Lending
Randall M. Lending
Michael M. Eidelman
Michael J. Goettig (MG 2771)
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New York, New York 10019
(212) 407-7700

Attorneys for Plaintiff
Merrill Lynch Business Financial Services,
Inc.